

1 **JOSEPH W. CHARLES, P.C.**
2 **5704 West Palmdale Avenue**
3 **P.O. Box 1737**
4 **Glendale, Arizona 85311-1737**
5 **Phone: (623) 939-6546**
6 **Fax: (623) 939-6718**
7 LawOffice@Joecharles.com

8 **JOSEPH W. CHARLES**
9 **State Bar No. 003038**
10 **Attorney for Debtor**

11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **DISTRICT OF ARIZONA, PHOENIX DIVISION**

13 In re:)

14 JAMES S. CARD,)

15 Debtor.)

Case No. 2:09-bk-22479-CGC

Chapter 13

16 BAC HOME LOANS SERVICING, L.P.)

17 fka Countrywide Home Loans Servicing,)

18 L.P. and its successors and/or assignees)

19 Movant,)

20 vs.)

21 JAMES S. CARD and EDWARD J.)

22 MANEY, Trustee,)

23 Respondents.)

RESPONSE TO MOTION
FOR RELIEF FROM
AUTOMATIC STAY

RE: Real Property Located at
3423 E. Angela Dr.
Phoenix, AZ 85032

24 COME NOW the debtor, JAMES S. CARD, by and through counsel
25 undersigned, and hereby responds and objects to Movant BAC HOME LOANS
26
27
28

SERVICING, L.P. fka Countrywide Home Loans Servicing, L.P. and its successor and/or assignees' Motion for Relief from the Automatic Stay as follows:

The Note and Deed of Trust are in the name of **Countrywide Home Loans, Inc.** Although the Movant appears to have proven that they are the same entity as **Countrywide Home Loans Servicing, L.P.**, they have done nothing to show that Countrywide Home Loans Servicing, L.P. ever owned the Note.

A litigant must have both constitutional standing and prudential standing for a federal court to have jurisdiction to hear the case. Elk Grove Unified Sch. Dist. V. Newdow, 542 U.S. 1, 11 (2004). Constitutional standing requires an injury be fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief. United Food & Drug Commercial Workers Union Local 751 v. Brown Group, Inc., 517 U.S. 544, 551 (1996). For prudential standing, the litigant must assert its own legal rights and interests, Oregon v. Legal Servs. Corp., 552 F.3d 965, 971 (9th Cir. 2009).

Also, an action must be prosecuted by the real party in interest. Fed. R. Civ. P. Rule 17(a)1. The holder of the note is the only entity entitled to enforce it. A.R.S. § 47-3301. The holder is defined as "the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession." A.R.S. § 47-1201(B)(21)(a).

Movant has not provided a scintilla of evidence that they came to be the holder of the note. On the contrary, from the documents provided to the Court it appears that Countrywide Home Loans, Inc. is the holder of the note. Therefore, Movant is not the real party in interest and does not have standing to bring this action.

1 Debtors respectfully requests that the Movant's Motion for Relief from the
2 Automatic Stay be denied.

3 RESPECTFULLY SUBMITTED this 29th day of June, 2010.

4 JOSEPH W. CHARLES, P.C.

5 By /s/ Joseph W. Charles
6 JOSEPH W. CHARLES
7 5704 W. Palmaire Avenue
8 P.O. Box 1737
9 Glendale, Arizona 85311
10 Attorney for Debtors

11 COPY of the foregoing
12 mailed this 29th day of
13 June, 2010, to:

14 Kim R. Lepore
15 Robert J. Hopp & Associates, LLC
16 1366 E. Thomas Road, Suite 201
17 Phoenix, AZ 85014
18 Attorney for Movant

19 Edward Maney
20 P.O. Box 10434
21 Phoenix, AZ 85064-0434
22 Trustee

23 By: /s/ C. Short
24
25
26
27
28